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AUGUST B. LANDIS

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re	)	No. 10-13817
Robert L. Whitehead and Diana L. Whitehead,	)	Chapter 7
	)	
Debtors.	)	(NO HEARING REQUIRED)
	)	

**UNITED STATES TRUSTEE'S EX PARTE**  
**MOTION TO REOPEN CHAPTER 7 CASE**

**I. MOTION:**

August B. Landis, the Acting United States Trustee for this Region ("U.S. Trustee"), by his undersigned counsel, hereby moves the Court pursuant to 11 U.S.C. § 350(b) for an ex parte order to reopen the above referenced bankruptcy case. The motion is based on the following:

**II. STATEMENT OF FACTS:**

1. October 2, 2010, Robert L. Whitehead and Diana L. Whitehead ("Debtor(s)") filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. Linda S. Schuette was thereafter appointed the chapter 7 trustee in Debtors' case. The section 341(a) hearing was held in this case on November 10, 2010 *See* PACER.

2. On November 12, 2010, the case trustee filed a no asset report. A final decree was entered on January 11, 2011 and the case was closed on January 19, 2011 *See*, PACER.

3. The case trustee has received information regarding the existence of an additional asset which could be administered for the benefit of Debtors' creditors. *See*, Declaration of

1 Linda S. Schuette.

2 4. Based upon the foregoing, the U.S. Trustee submits that this case should be  
3 reopened, and a chapter 7 is necessary under Rule 5010 of the Federal Rules of Bankruptcy  
4 Procedure.

5 5. In further support of this motion, the U.S. Trustee requests that the Court take  
6 judicial notice of all documents filed in the case pursuant to Rule 201 of the Federal Rules of  
7 Evidence.

## 8 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

9 Section 350(b) of the Bankruptcy Code permits a case to be reopened “to administer  
10 assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b). A case may be  
11 reopened on motion of a party in interest and, if the court finds it necessary, a trustee should be  
12 appointed. *See* Fed.R.Bankr.P. 5010. A motion to reopen is properly brought on an ex parte  
13 basis. *See Abbott v. Daff (In re Abbott)*, 183 B.R. 198, 200 (9<sup>th</sup> Cir. B.A.P. 1995) (“A motion to  
14 reopen a bankruptcy case is simply a mechanical device which can be brought ex parte and  
15 without notice.”).

16 Given the limited nature of the relief requested by this motion, the U.S. Trustee requests  
17 relief from the requirement of B.L.R. 9013-1 that a separate memorandum of points and  
18 authorities be filed.

## 19 **III. PRAYER FOR RELIEF**

20 WHEREFORE, the U.S. Trustee respectfully requests entry of an order (i) reopening  
21 Debtors’ case; (ii) authorizing the U.S. Trustee to appoint a chapter 7 trustee; and (iii) granting  
22 such further relief as the Court deems appropriate.

23 Dated: February 11, 2011

Respectfully submitted,  
August B. Landis, U.S. Trustee

24 By: /s/ Patricia A. Cutler (#50352)  
Attorney for the U.S. Trustee